

**WINTHROP COUCHOT**

**PROFESSIONAL CORPORATION**

660 Newport Center Drive, Fourth Floor

Newport Beach, CA 92660

Telephone: (949) 720-4100

Facsimile: (949) 720-4111

Sean A. O'Keefe – NY Bar No. 1980853, CA Bar No. 122417

Paul J. Couchot – CA Bar No. 131934

Counsel for the SunCal Appellants

**MILLER BARONDESS, LLP**

1999 Avenue of the Stars, Suite 1000

Los Angeles, CA 90067

Telephone: (310) 552-4400

Facsimile: (310) 552-8400

Louis R. Miller – CA Bar No. 54141

Martin H. Pritikin -- CA Bar No. 210845

Special Litigation Counsel for SunCal Appellants

**UNITED STATES BANKRUPTCY COURT**

**SOUTHERN DISTRICT OF NEW YORK**

In re

**LEHMAN BROTHERS HOLDINGS  
INC, et al.,**

**Debtors.**

**Chapter 11**

**Case No. 08-13555 (JMP)**

**Jointly Administered**

**AMENDED STATEMENT OF ISSUES AND DESIGNATION OF RECORD**  
**RE APPEAL OF ORDER APPROVING DEBTORS' MOTION PURSUANT TO**  
**BANKRUPTCY RULE 9019 FOR AUTHORITY TO COMPROMISE CONTROVERSY IN**  
**CONNECTION WITH A REPURCHASE TRANSACTION WITH FENWAY CAPITAL,**  
**LLC AND A COMMERCIAL PAPER PROGRAM WITH FENWAY FUNDING, LLC**  
**FILED BY THE SUNCAL APPELLANTS**

SunCal Communities I LLC, SunCal Communities III LLC, SCC/Palmdale LLC, Acton Estates LLC, SunCal Beaumont Heights LLC, SunCal Emerald Meadows LLC, SunCal Johansson Ranch LLC, SunCal Bickford Ranch LLC, SunCal Summit Valley LLC, Seven Brothers LLC, Kirby Estates LLC, SJD Partners Ltd., SJD Development Corp., SCC Communities LLC, North Orange Del Rio Land LLC and Tesoro SF LLC, the debtors and debtors-in-possession (collectively, the "SunCal Appellants") hereby set forth the issues and designate the record in the

SunCal Appellants' appeal to the District Court for the Southern District of New York from that certain *Order Approving Debtors' Motion Pursuant To Bankruptcy Rule 9019 For Authority To Compromise Controversy In Connection With A Repurchase Transaction With Fenway Capital, LLC And A Commercial Paper Program With Fenway Funding, LLC* (the "Order") entered by the United States Bankruptcy Court on May 13, 2010 (Docket No. 9030) (the "Compromise Order").

The SunCal Appellants are concurrently appealing that certain *Order Denying Motion Of The Suncal Debtors For An Order Determining That The Automatic Stay Does Not Apply; Or, In The Alternative, Granting Relief From Stay* (Docket No. 9059) ("RFS Order") and they are filing a motion seeking to consolidate these appeals on the grounds that the hearings on the underlying motions were effectively combined, and the resulting rulings are integrally related, both factually and legally. Accordingly, the within Statement of Issues and the Designation of Record encompasses issues that are based upon findings made by the lower court in connection with the RFS Order, but that were effectively construing the legal impact of the Compromise Order.

## I

### **STATEMENT OF ISSUES**

1. Whether the Compromise Order is void. This jurisdictional issue is premised upon the contention that the Compromise authorized a transaction that was designed to violate, and in fact violated, the automatic stay applicable in the SunCal Appellants' pending Chapter 11 cases;

2. Whether the Compromise Order is void on the grounds that it approves a motion that collaterally attacked an order entered by the United States Bankruptcy Court Central District of California, which is currently the subject of an appeal before the Ninth Circuit;

3. Whether the Court used the proper standard in ruling on the Compromise Motion;

4. Whether the Court correctly applied the proper standard in ruling on the Compromise Motion;

5. Whether the Compromise Order is void on the grounds that it granted a motion filed in bad faith;

6. Whether the finding in the Compromise Order that “LCPI will have repurchased the Repo Assets pursuant to the MRA” is in error;

7. Whether the finding in the Compromise Order that “LBHI is fully subrogated to the claims of Fenway against LCPI to the full extent of any payment by LBHI in respect of such claims” is in error; and

8. Whether the finding in the Compromise Order that “LBHI shall succeed to any and all liens and security interests with respect to the Repo Assets and any interest therein asserted by Fenway under the Fenway Repo and/or the Fenway Documents (which liens and security interests shall remain in effect notwithstanding any subsequent transfer by LCPI of any of the Repo Assets or any interest therein), in the same priorities as held by Fenway Capital or Fenway Funding, to secure LBHI’s subrogated claims, which liens and security interests shall hereby be deemed assigned transferred by Fenway Capital and Fenway Funding to LBHI” is in error.

## II

### **DESIGNATION OF RECORD**

The following documents in the record below are designated in support of this appeal:

Item No.	Docket No.	Document
1	7831	Motion to Authorize : Debtors' Motion Pursuant to Bankruptcy Rule 9019 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC..
2	7836	Declaration of Alfredo R. Perez in Support of Order to Show Cause to Consider Debtors Motion Pursuant to Bankruptcy Rule 9019 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC
3	8105	Opposition SunCal Debtors' Joint Opposition to Motion Pursuant to Bankruptcy Rule 9019 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC

4	8273	Response of Fenway Capital, LLC and Fenway Funding, LLC to the SunCal Debtors' Joint Opposition, and the Limited Joinder of Steven M. Spier, Chapter 11 Trustee, thereto, to the Debtors' Motion Pursuant to Bankruptcy Rule 9010 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital and a Commercial Paper Program with Fenway Funding
5	8252	Motion to Join - Limited Joinder of Steven M. Speier, Chapter 11 Trustee in the Opposition of SunCal Debtors to Motion Pursuant to Bankruptcy Rule 9019 For Authority to Compromise Controversy in Connection With a Repurchase Transaction With Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC.
6	8260	Response / Debtors' Response to the SunCal Debtors' Joint Opposition to Motion Pursuant to Bankruptcy Rule 9019 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC
7	8261	Declaration / Declaration of Robert Roesch in Support of Debtors' Response to the SunCal Debtors' Joint Opposition to Motion Pursuant to Bankruptcy Rule 9019 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC
8	8273	Response of Fenway Capital, LLC and Fenway Funding, LLC to the SunCal Debtors' Joint Opposition, and the Limited Joinder of Steven M. Spier, Chapter 11 Trustee, thereto, to the Debtors' Motion Pursuant to Bankruptcy Rule 9010 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital and a Commercial Paper Program with Fenway Funding
9	8375	Motion for Adjournment Request of SunCal Debtors for Adjournment of Motion Pursuant to Bankruptcy Rule 9010 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and A Commercial Paper Program with Fenway Funding, LLC
10	8539	Motion for Relief from Stay Notice and Motion of the SunCal Debtors for an Order Determining that the Automatic Stay Does Not Apply; or in the Alternative, Granting Relief From Stay filed by Sean A. Okeefe on behalf of SunCal Debtors. with hearing to be held on 5/12/2010 at 10:00 AM at Courtroom 601 (JMP) (Okeefe, Sean) (Entered: 04/21/2010)

11	8541	Declaration of Sean A. O'Keefe in Support of Motion of the SunCal Debtors for an Order Determining that the Automatic Stay Does Not Apply; or, in the Alternative, Granting Relief from Stay
12	8542	Declaration of Bruce Cook in Support of Motion of the SunCal Debtors for an Order Determining that the Automatic Stay Does Not Apply; or, in the Alternative, Granting Relief from Stay
13	8539	Debtors Objection to the Motion of the SunCal Debtors for an Order Determining that the Automatic Stay Does Not Apply; or in the Alternative, Granting Relief from Stay
14	8788	Notice of Filing of Revised Order Approving Debtors' Motion Pursuant to Bankruptcy Rule 9019 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC
15	8812	Declaration of Allen S. Blaustein in Support of Debtors' Objection to the Motion of the SunCal Debtors for an Order Determining that the Automatic Stay Does Not Apply; or in the Alternative, Granting Relief from Stay
16	8863	Objection to Motion SunCal Debtors' Objection to Form of Revised Order Approving Debtors' Motion Pursuant to Bankruptcy Rule 9019 for Authority to Compromise Controversy Relating to Repurchase Transaction
17	8916	Supplement to Debtors' Motion Pursuant to Bankruptcy Rule 9019 for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC
18	8939	Statement / Supplemental Statement Of Official Committee Of Unsecured Creditors with Respect to Proposed Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC
16	8940	Statement Of Official Committee Of Unsecured Creditors With Respect To SunCal Debtors' Motion To Modify The Automatic Stay
19	8949	Reply to Motion of the SunCal Debtors for an Order Determining that the Automatic Stay Does Not Apply; or, In the Alternative, Granting Relief From Stay

20	8960	Declaration of Paul J. Couchot in Support of Reply Re: Motion of the SunCal Debtors for an Order Determining that the Automatic Stay Does Not Apply; or, in the Alternative, Granting Relief from Stay
21	9030	Order Signed on 5/13/2010 Approving the Debtors' Motion for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC.
22	9059	Order Signed on 5/17/2010 Denying the Motion of the SunCal Debtors for an Order Determining that the Automatic Stay Does Not Apply; or in the Alternative, Granting Relief From Stay.
23	9351	Transcript regarding Hearing Held on May 12, 2010 10:07 AM RE: Conference Re: Alternative Dispute Resolution Procedures for Affirmative Claims of Debtors Under Derivatives Contracts; Hearing Re: Debtors' Motion for Authority to Compromise Controversy in Connection with a Repurchase Transaction with Fenway Capital, LLC and a Commercial Paper Program with Fenway Funding, LLC.

Dated: June 1, 2010

Respectfully submitted,

/s/ Sean A O'Keefe  
Sean A O'Keefe  
Paul J. Couchot

WINTHROP COUCHOT, P.C.  
660 Newport Center Drive, Fourth Floor  
Newport Beach, CA 92660  
Telephone: (949) 720-4100  
Facsimile: (949) 720-4111

/s/ Louis R. Miller  
Louis R. Miller  
MILLER BARONDESS, LLP  
1999 Avenue of the Stars, Suite 1000  
LOS ANGELES, CA 90067  
Telephone: (310) 552-4400  
Facsimile: (310) 552-8400

*Attorneys for the SunCal Appellants*